

Vitamins (Endo)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF ALASKA, *ex. rel.*
Attorney General BRUCE M. BOTELHO
Consumer Protection/Antitrust Unit
1031 West Fourth Avenue, Suite 200
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COMPLAINT

STATE OF CONNECTICUT, *ex. rel.*
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COMMONWEALTH OF KENTUCKY, *ex. rel.*
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CIVIL ACTION NO. _____

STATE OF OHIO, *ex. rel.*
Attorney General BETTY D. MONTGOMERY
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STATE OF OKLAHOMA, *ex. rel.*
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STATE OF SOUTH CAROLINA, *ex. rel.*
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STATE OF UTAH, <i>ex. rel.</i>)
Attorney General MARK L. SHURTLEFF)
Antitrust Section)
160 East 300 South, 5 th Floor)
Salt Lake City, UT 84111;)
)
Plaintiffs,)
)
v.)
)
HOFFMANN-LA ROCHE INC.,)
ROCHE VITAMINS INC.,)
AVENTIS ANIMAL NUTRITION, S.A.,)
DAIICHI PHARMACEUTICAL CO., LTD.,)
EISAI CO., LTD.,)
TAKEDA CHEMICAL INDUSTRIES, LTD., and)
BASF CORPORATION,)
)
Defendants.)

Plaintiffs, the States and Commonwealth of ALASKA, CONNECTICUT, KENTUCKY, OHIO, OKLAHOMA, SOUTH CAROLINA, and UTAH ("Plaintiff States") bring this action on behalf of their state agencies for injunctive relief, civil penalties, and restitution for indirect purchases of vitamins and vitamin products, to compensate for injuries sustained as a result of Defendants' violations of the antitrust laws of the United States and the antitrust and/or unfair trade practices laws of the Plaintiff States. The Plaintiff States allege, upon information and belief (except as to Plaintiffs and jurisdictional facts), the following:

I.

NATURE OF THE ACTION

1. The Plaintiff States allege that the Defendants engaged in a price-fixing conspiracy in

violation of the antitrust laws of the United States and the antitrust and/or unfair trade practices laws of the Plaintiff States.

2. In summary, the alleged violation consisted of a ten-year conspiracy to fix and raise prices and to allocate market share and customers in the market for bulk vitamins. The effect of the conspiracy was to raise prices for vitamins and vitamin products.
3. The Plaintiff States bring this action for injunctive relief, civil penalties, and restitution arising from Plaintiff States' agencies indirect purchases of vitamins and products containing vitamins.

II.

JURISDICTION AND VENUE

4. Plaintiff States bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26 for injunctive relief against Defendants' price-fixing conspiracies in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and under their respective state antitrust and/or unfair trade practices laws for restitution on behalf of their state agencies.
5. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) and (c), because the Defendants are found, reside or do business within the District of Columbia, or because the claims alleged arose, in part, in this judicial district.
6. The Complaint also alleges violations of various state antitrust and/or unfair trade practices statutes. All claims under federal and state law are based upon a common nucleus of operative facts and the entire action commenced by this Complaint constitutes

a single case which would ordinarily be tried in one judicial proceeding.

7. This Court has supplemental jurisdiction over the claims based upon state law pursuant to 28 U.S.C. § 1367. Supplemental jurisdiction should be exercised in the interest of judicial economy, convenience and fairness.

III.

THE PARTIES

8. The Plaintiff States are fully set forth and identified above.
9. Defendant Hoffmann-La Roche Inc. ("Roche Inc.") is a New Jersey corporation with operations in the United States, with its principal place of business in Nutley, New Jersey. Roche Inc. was engaged in the business of the distribution and sale of vitamins, vitamin premixes, and bulk vitamins throughout the United States and the world until at least 1997.
10. Defendant Roche Vitamins Inc. ("Roche Vitamins") is a Delaware corporation with its principal place of business in New Jersey. Roche Vitamins is directly engaged in the business of the distribution and sale of vitamins, vitamin premixes, and bulk vitamin products throughout the United States and the world. Roche Inc. and Roche Vitamins are hereinafter collectively referred to as "Roche."
11. Defendant Aventis Animal Nutrition S.A. ("Aventis") is a French corporation with its principal place of business in Antony, France. It was formerly known as Rhone-Poulenc Animal Nutrition S.A. Aventis, through its affiliates, is engaged in the business of the distribution and sale of vitamins, vitamin premixes, and bulk vitamin products throughout

the United States and the world.

12. Defendant BASF Corporation (“BASF”) is a Delaware corporation with operations in the United States, with its principal place of business in Mount Oliver, New Jersey. BASF Corporation is engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamin products throughout the United States and the world.
13. Defendant Daiichi Pharmaceutical Co., Ltd. (“Daiichi”) is a Japanese corporation with its principal place of business in Tokyo, Japan. Daiichi is engaged in the business of the distribution and sale of vitamins, vitamin premixes, and bulk vitamin products throughout the United States and the world.
14. Defendant Eisai Co., Ltd. (“Eisai”) is a Japanese corporation with its principal place of business in Tokyo, Japan. Eisai is engaged in the business of the distribution and sale of vitamins, vitamin premixes, and bulk vitamin products throughout the United States and the world.
15. Defendant Takeda Chemical Industries, Ltd. (“Takeda”) is a Japanese corporation with operations in the United States. Takeda, through its affiliates, is engaged in the business of the distribution and sale of vitamins, vitamin premixes and bulk vitamin products throughout the United States and the world.
16. The Defendants named in this Complaint are referred to herein as the “Defendants.”
17. The acts charged in this Complaint as having been done by Defendants were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of Defendants’ business or affairs and acting within the

scope of their authority.

18. Various other persons, companies and corporations, which have not been named as defendants, have participated as co-conspirators with Defendants in the violations alleged and have performed acts and made statements in the United States and elsewhere in furtherance thereof.

IV.

TRADE AND COMMERCE

19. Vitamins are organic compounds required in the diet of humans and animals for normal growth and maintenance of life. Vitamins are essential sources of certain coenzymes necessary for metabolism, the biochemical processes that support life. All known vitamins have been synthesized chemically, and such synthesized vitamins are manufactured and sold by the Defendants and their corporate co-conspirators. Vitamins are necessary for the normal and healthy growth and development of both humans and animals. Large quantities of vitamins are sold directly and indirectly to Plaintiff States.
20. Defendants are manufacturers, marketers, and distributors of vitamins (synthetic and natural, and in dry and oil form), vitamin premixes, and other vitamin products for sale throughout the United States. The manufacture of vitamins, vitamin premixes and other vitamin products is a multi-billion dollar a year industry worldwide. The North American market for vitamins used in animal nutrition alone is an over \$500 million a year industry.
21. Defendants are also engaged in the sale, marketing, and distribution of vitamins, vitamin

premises, and other vitamin products to manufacturers and distributors of products containing vitamins, including vitamin supplements designed for human consumption and vitamin enriched foods. Such products are purchased indirectly in large quantities by the Plaintiff States each year.

22. The activities of the Defendants in the regular, continuous, and substantial flow of interstate commerce have had and do have a substantial impact upon interstate commerce.

V.

FIRST CLAIM FOR RELIEF

23. Beginning not later than 1989, the Defendants and their co-conspirators entered into and engaged in a combination and conspiracy to suppress competition by fixing the price, and allocating the markets and sales volumes, of vitamins, vitamin premixes, bulk vitamins and vitamin products offered for sale in the United States. Their conduct was an unreasonable restraint of trade in commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.
24. The conspiracy engaged in by the Defendants and their co-conspirators consisted of a continuing agreement, understanding and concert of action among the conspirators to fix prices, allocate markets and volumes of sales, of vitamins, vitamin premixes, bulk vitamins, and other vitamin products in the United States.
25. The conspiracy engaged in by the Defendants affected at least the following vitamins during at least the time periods indicated:

- A. vitamins A and E sold in the United States and elsewhere, from January 1990 into February 1999;
 - B. vitamin B2 (Riboflavin) sold in the United States and elsewhere, from at least January 1991 into at least Fall 1995;
 - C. vitamin B5 (CalPan) sold in the United States and elsewhere, from January 1991 into at least December 1998;
 - D. vitamin C sold in the United States and elsewhere, from January 1991 into at least the late Fall 1995;
 - E. beta carotene sold in the United States and elsewhere, from January 1991 into at least December 1998; and,
 - F. vitamin premixes sold to customers located throughout the United States, from January 1991 into at least December 1997.
26. The acts committed by the Defendants in establishing and in furtherance of the conspiracies violate federal and state antitrust and/or unfair trade practices laws.
27. On May 20, 1999, F. Hoffmann-La Roche Ltd., affiliate of Hoffmann-La Roche Inc. and Roche Vitamins Inc., and BASF Aktiengesellschaft, indirect parent of BASF Corporation, agreed to plead guilty to breaches of federal antitrust law. Defendant Aventis avoided criminal prosecution in the United States for the illegal acts alleged in this Complaint by participating in the United States Department of Justice Corporate Leniency Program. On September 9, 1999, Daiichi Pharmaceutical Co., Ltd., Eisai Co., Ltd., and Takeda Chemical Industries, Ltd. agreed to plead guilty to breaches of federal

antitrust law.

VI.

SECOND CLAIM FOR RELIEF

28. Plaintiff State of Alaska repeats and realleges each and every allegation contained in paragraphs 1-27 with the same force and effect as if here set forth in full.
29. The aforementioned conspiracies by Defendants and their co-conspirators were and are in violation of AS §§45.50.471 *et seq.*

VII.

THIRD CLAIM FOR RELIEF

30. Plaintiff State of Connecticut repeats and realleges each and every allegation contained in paragraphs 1-27 with the same force and effect as if here set forth in full.
31. The aforementioned conspiracies by Defendants and their co-conspirators were and are in violation of §§ 42-110a *et seq.* of the Connecticut General Statutes.

VIII.

FOURTH CLAIM FOR RELIEF

32. Plaintiff Commonwealth of Kentucky repeats and realleges each and every allegation contained in paragraphs 1-27 with the same force and effect as if here set forth in full.
33. The aforementioned conspiracies by Defendants and their co-conspirators were and are in violation of K.R.S. §§367.170 and 367.175.

IX.

FIFTH CLAIM FOR RELIEF

34. Plaintiff State of Ohio repeats and realleges each and every allegation contained in paragraphs 1-27 with the same force and effect as if here set forth in full.
35. The aforementioned conspiracies by Defendants and their co-conspirators were and are in violation of the Valentine Act, Ohio Rev. Code §§ 109.81 and 1331.01 *et seq.*

X.

SIXTH CLAIM FOR RELIEF

36. Plaintiff State of Oklahoma repeats and realleges each and every allegation contained in paragraphs 1-27 with the same force and effect as if here set forth in full.
37. The aforementioned conspiracies by Defendants and their co-conspirators were and are in violation of 15 O.S. §§751 *et seq.*

XI.

SEVENTH CLAIM FOR RELIEF

38. Plaintiff State of South Carolina repeats and realleges each and every allegation contained in paragraphs 1-27 with the same force and effect as if here set forth in full.
39. The aforementioned conspiracies by Defendants and their co-conspirators were and are in violation of the South Carolina Unfair Trade Practices Act, §§39-5-10 *et seq.*

XII.

EIGHTH CLAIM FOR RELIEF

40. Plaintiff State of Utah repeats and realleges each and every allegation contained in paragraphs 1-27 with the same force and effect as if here set forth in full.
41. The aforementioned conspiracies by Defendants and their co-conspirators were and are in

violation of §§76-10-914 *et seq.*, Utah Code Ann. (2000).

XIII.

EFFECTS

42. The unlawful contracts, combinations, and conspiracies of the Defendants have had the following effects among others:
- A. Price competition in the sale of vitamins and vitamin products has been restrained, suppressed and eliminated throughout the United States;
 - B. Prices for vitamins and vitamin products sold by the Defendants and their co-conspirators have been raised, fixed, maintained and stabilized at artificially high and noncompetitive levels throughout the United States;
 - C. The Plaintiff States, who purchase significant amounts of vitamins and vitamin products, have paid more for these products than they would have paid in a truly competitive market;
 - D. Markets and customers have been divided among the Defendants such that Plaintiff States have not been able to purchase vitamins at prices they would have paid in a truly competitive market.
43. Each of these acts resulted in the illegal restraint of trade and commerce and acted to destroy free and open competition in our market system and, thereby, resulted in increased costs and the deterioration in quality of commodities and services to the Plaintiff States.
44. As a direct and proximate result of the Defendants' unlawful conduct, the Plaintiff States

have been irreparably harmed and injured in their business and property.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff States pray that the Court:

1. Adjudge and decree that the Defendants have engaged in an unlawful contract, combination and conspiracy, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.
2. Adjudge and decree that the Defendants have engaged in unlawful conduct in violation of the state statutes referred to herein.
3. Enter judgment in favor of the Plaintiff States and against the Defendants, jointly and severally, for the restitution determined to be due to their state agencies as a result of the Defendants' violation of the above-referenced federal and state antitrust and/or unfair trade practices laws.
4. Enter judgment against each Defendant for the maximum civil penalty allowed under those state statutes referred to herein.
5. Enjoin the Defendants from continuing or repeating the unlawful combination or conspiracies alleged herein or other appropriate injunctive relief.
6. Award the Plaintiff States the costs of suit, including reasonable attorneys' fees; and such other and further relief as the Court may deem appropriate.

JURY TRIAL DEMAND

Plaintiffs demand trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure on all issues triable of right by a jury.

DATED: July ____, 2001

FOR THE PLAINTIFF STATES

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